The Polynesian:

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Abraham Fornander, . . . Editor.

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Ships supplied with Recruits and money advanced on Bills

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SAN FRANCISCO. THE UNDERSIGNED having been appointed Agents for the above Company, beg leave to public that they are now prepared to issue

MARINE INSURANCE POLICIES On cargo, freight and treasure to all parts of the world.

Honolulu, Aug. 21, 1861. 17-tf Sisterhood of the Sacred Hearts.

HONOLULU, Fort St., near the Catholic Church. THE FOURTH ANNUAL SESSION of this

Young Ladies of every religious denomination will be admitted, provided it be previously agreed that they will conform to the general regulations of the house.

The course of Education for Boarders will comprise Reading, Westing Grammar Composition, Proceeding, Additional Conformation, Proceeding, Proceeding, Additional Conformation, Proceeding, Additional Conformation, Proceeding, Proceeding, Conformation, Proceeding, Conformation, Proceeding, Conformation, Writing, Grammar, Composition, Elocution, Arithmetic, Geography, use of Globes, History (sacred and profane), Chronology, Mythology, Logic, French and German Languages, Book-Keeping, Music (Vocal and Instrumental), Drawing, Painting, and all

kinds of Fancy Needle Work.

The Sisters being aware that all education is imperfect without the knowledge of the Law of God, will devote themselves with the most sedulous care, to the religious instruction of their Catholic pupils, without neglecting to inculcate in the minds of the others the general principles of Christian morality. The most conscientious attention will be given to form their manner. others the general principles of Christian morality. The most conscientious attention will be given to form their manners and to train them up to habits of order, neatness and industry. The diet will be wholesome and abundant. The health of the pupils will be the object of constant and ma-

ternal solicitude, and at all times they will be under the immediate superintendance of their teachers. TERMS. BOARD & TUITION, per Quarter of Twelve Weeks, \$45. Music, Drawing, Painting, German Language, and Artificial

Music, Brawing, Taining,
Flowers, will form extra charges.

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Payments to be made quarterly in advance. Persons residing at a distance are requested to have a responsible agent in the city No reduction made in case of children being withdrawn before the expiration of the quarter.

Tuesdays and Saturdays will be the appointed days for parents

On the first Saturday of each month the Boarders will be alany other, without a written permission from said parents or guardians. They must return to the establishment before 6 o'clock, P. M., the same day.

Postage, stationery, washing and mending, Doctor's fees and medicines, will be chargeable to the parents.

For further particulars, application may be made to Sister Mars. Leaving. lowed to go out with their parents or gua

THE PERMANENT establishment of the " Star

of the Pacific," (Hoku o ka Pakipika), newspaper to be printed in the Hawanian language, having become a fixed fact, the un-lersigned respectfully notifies those desirons of availing themselves of its columns as an advertising medium, availing themselves of its columns as an advertising mentals, that its issue will be on Thursday of each week, and that the edition to be printed is over two thousand copies. Terms reasonable, and advertisements translated gratuitously.

G. W. MILLS, Manager. IF At the Polynesian Office.

For Sale. AT THIS OFFICE—Counting House Almanae foreign Advertisements.

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Particular attention given to the purchase, shipment and sale of Merchandise, to forwarding and transhipment of goods, the chartering and sale of vessels, the supply-ing of whaleships, and the negotiation of Exchange. EXCHANGE ON HONOLULU in sums to suit. ADVANCES MADE ON CONSIGNMENTS.

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SHIP CHANDLERIES, &c., HAKODADI, JAPAN, WILL ATTEND TO THE sales of Merchandise, as also to the purchase and shipment of all kinds of Goods exported from that country. Mr. RICE is the Comme

cial Agent for the United States at that port, and having already, resided there for about five years, is enabled by his acquaintance with the country, to offer many advantages in the discharge of any business that may be entrusted to their House. REFER TO WM. T. COLEMAN & Co., New York, JOHN H. ALDRICH, Esq., CHARLES SCUDDER & CO.,....

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BEG TO INFORM OWNERS AND MASTERS OF SHIPS about to visit the port of Hakodadi, that they are prepared to take Consignments and do business on the usual terms.

By arrangements with Home Insurance Offices, Messrs.

FLETCHER & CO. can take risks on Oil, or other shipments of Produce hence.

Hakodadi, Yesso, Japan, 4th July, 1859. CHARLES BREWER, COMMISSION MERCHANT, Boston, U. S.

Refer to R. W. Wood and C. BREWER 2D. WM. FAULKNER & SON 131 SANSOME ST., SAN FRANCISCO, A GENT FOR JAMES CONNER & SONS, U. S.

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Printers will find it to their advantage to call on us be-

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do quinces do peaches, do Pears French capers English pickles

Raspberry jam Cranberry jam do pie fruits do sauces do mustard Strawberry do, &c. &c, &c. Mince meats Sage Sweet savory Soap Tins of water, butter, sugar. Summer savory Curry powder oyster, soda and wine crack ers Ground cassia Smoked hams do herrings Best Oolong tea Whole Preserved salmon Ground cloves do ginger Cream Tartar Green corn Crushed sugar Loaf do Haxall flour Fresh raisins

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PACKED BY E. KRULL, at Kealia.

VON HOLT & HEUCK, Corner Fort and Merchant streets. NOTICE.

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HONOLULU, SEPTEMBER 13, 1862.

12 FEET SQUARE. Represents average shooting at 500 yards, ELEY'S

TARGET

ENFIELD Eley's Ammunition

For Sporting or Military Purposes. OUBLE Waterproof Central Fire Caps, Pelt Wadding to prevent the leading of Guns, Wire Cartridges for killing game, &c., at long distances, Breech Loading Cartridge Cases of superior quality for Shot Guns and Rifles. Contractors to the War Department for Small Arms

Jacob's Rifle Shell Tubes, Cartridges and Caps for Colt's, Adams', and other Revolvers. Enfield's Ammunition, and Ball Cartridges for Whitworth and Henry's Rifles, also for Westley Richard's, Terry's, Wilson's, Prince's and other Breech Loaders. Bullets of uniform weight made by compression from Soft Refined Lead

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Choice Meats and Low Prices THE UNDERSIGNED are now supplying iers with the very best Meat raised of ads, at the fellowing low rster : Beef, per 10 4 cents.

......... be made by us to give entire satisfaction Every endeavors us with their patronage.
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BOOK-BINDING! Mr. GEO. W. VOLLUM ATE OF SAN FRANCISCO. HAS TAKEN

Pamphlets, Illustrated Newspapers, Magazines, Music.

Old Books, &c., &c. Particular attention paid to re-Binding old and choice Books. Mr. V. having had many years experience in Book-Binding in all its branches, hopes to receive a share of the business required Orders from the other islands, should be accompanied with particular directions, as to the style; and if the work is to match volumes previously bound, a sample volume should be sent with the job.
Orders may be left at the Book Store of H. M. Whitney.

SPECIAL NOTICE!



THE UNDERSIGNED begs respectfully to inform the public, that, in connection with his other business, he will here-BUSINESS!

In all its various branches, and equests a share of public patronage. quests a share of public patronage.

All work guaranteed. Prices to suit the times.

WM. DUNCAN.

NOTICE.

WHEREAS THE UNDERSIGNED HAS BEEN INFORMED on W good authority that great irregularity exists in the taking and killing of the wild cattle on the mountains on Hawaii, belonging to His Majesty and to the Government, by parties who claim or pretend to claim right under bills of sale from His Majesty or from the Government, and whereas, from the nature o the country and other causes it is almost impossible to place agents to guard the interests of His Majesty and of the Govern ment, and whereas all parties having legal claims on the said wild cattle have already had time sufficient, if they had used ine diligence to remove the same : Now therefore, the undersigned hereby gives notice to all ties who purchased wild cattle running on the mountains on Ha waii, previous to the 1st day of January 1857, to remove the if not already removed, on or before the 1st day of May next

after which time, parties taking wild cattle will be pro Interior Office, † L. KAMEHA!

Honolulu, May 10, 1859.

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NOTICE! THE undersigned beg to infolm their friends that they have established a branch of their house at VIC-TORIA, V. I., under the management of Mr. Henry Rhodes and under the style of JANION & GREEN, for the transaction of a general Commission business. Particular attention will be and to consignments of Sandwich Island produce.

JANION, GREEN & CO.

JUST RECEIVED! Boxes "Mary & Jane,"
" "Moore"
" "Hydromei"

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5s, 23 "
% lbs, 23 "
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MELCHERS & CO. "M. Rae" Wanted.

10,000 LBS. TAMARINDS.—The anbarinds in the shell, or 5 cents without the shell. FREDERICK HORNE. HHDs. BASS' DRAUGHT ALE, of superior quali-

For sale by H. HACKFELD & CO. Firewood! Firewood!! FOR SALE at very reasonable rates, at MELCHERS & Co

ty;
Base' bottled Ale, in quarta;
Superior Claret, in casks and cases;
Superior Holland Gin. in stone jars and bottles.

The Polynesian.

SUPREME COURT-In Equity.

ISAAC MONTGOMERY 28. DANIEL MONTGOMERY.

Chancellor ALLEN delivered his decision as follows: An abstract of the bill and answer have bitherto been iven by the Court, on questions which have arisen in the progress of the investigation, and, therefore, I shall only advert to the allegations, as they involve questions material to the issue now presented.

The complainant avers that he conveyed to Charles W. Vincent, for the nominal consideration of \$8,000, on the 4th of September, 1849, an estate on the island of Oahu, called the Pouloa Salt Works; the design being that Vincent should hold the estate in trust. And it is alleged in the bill, that the stock and furniture were purchased by the complainant or by his funds; and further, that the estate was mortgaged by said Vincent to B. F. Angel, for the sum of \$5,000, and that the money arising therefrom was received by the complainant and said Vincent, and that the latter gave his note for the amount he had received to the respondent, who, on the 20th of July, sued said note and recovered judgment thereon; and further, that said mortgage was paid by raising money on the estate. He further avers that he invited his brother, the respondent, to come to this country, where he arrived on the 17th February, 1855, and that he paid his passage, for the respondent was in destitute circumstances; and that on the 20th June, of the same year, said Vincent, by the request of complainant, executed a deed to the said respondent, of the estate, for and in consideration of \$15,000 (fifteen thousand dollars); and he further avers that the consideration was nominal, that no money was paid to Vincent by respondent, that he was at the time without means or credit; and that the object of the deed was that the estate might be held by him for the benefit of the complain at, who says that there was a verbal agreement with his brother that he should draw from the receipts of the property one hundred dollars per month; and that at the end of each year the respondent should receive for his services one-third of the profits of the business, and the com-plainant two-thirds; and that the one hundred dollars per month was to be accounted for on final settlement; that the respondent continued to pay him money, but no settlement has been made, but of late he refuses to pay him anything; and denies that the complainant has any interest in the estate. And the complainant further alleges, that it was expressly understood and agreed, that when he might desire it, the said estate was to be conveyed to him, or to whomsoever he might direct : that he has made repeated efforts for a settlement but without success; that the respondent has offered only to give his notes, secured on the estate for

care since 1842. The complainant prays that an account may be taken of all the dealings and transactions of the respondent touching the Puuloa Salt Works, from the 19th of June, 1855, to the day of filing this bill, and that the amount due the complainant may be ascertained, and that the respondent may be decreed to pay the some; and, also, that the said respondent may be ordered to convey the estate to the complainant.

fifty thousand dollars, besides many years of toil and

The respondent admits in his answer, that the conveyance of the property was made to Vincent, and believes that the consideration of eight thousand dollars is correct; but does not know whether the estate was held in trust or not, or whether it was conveyed to enable Vincent to manage the property better for complainant's interest, but believes it to be untrue.

He denies that he came to this country in destitute circumstances, for he was skilled in the art of shipbuilding, as well as having general business qualifications, and with sufficient means at his command to establish himself independently of his patronage; and he further says, that he does not know whether said deed from Vincent was executed at the request of complainant, but denies that the sum of fifteen thousand dollars, as stated as a consideration in said deed, was merely nominal, but states that it was the price at which he purchased the estate of said Vincent, who sold him the same on time, secured by his negotiable notes and nortgage of the estate. And he denies further, that the intent and object of the conveyance was that he should hold the estate for the use and benefit of complainant, or for the purpose of enabling himself to manage it with more facility for the use and benefit of

Defendant further says he has no "personal knowledge whether the complainant, as in bill alleged, continued until the 20th June, 1855, to enjoy a large, or any portion of, the proceeds of the said estate, or whether the same, if true, was or was not according to an agreement in bill alleged, as between the complainant and the said C. W. Vincent; or whether the said Vincent, in fact, held the estate in trust for the use or benefit of the complainant, as in bill alleged, or whether said writing was made for the purpose of enabling the said Vincent to manage said estate more effectually, for the use or benefit of the complainant, or whether the said Vincent received for his alleged management onethird or any other, or what part of the proceeds of the said estate, but, saith this defendant, is credibly informed and verily believes, and, therefore, avers that all the said above last-mentioned statements and allegations are without any foundation in fact, and were never alleged by the complainant in any of the intercourse between them since defendant arrived in this kingdom." He further avers that he supposed the furniture was Vincent's, because complainant never made any claim to it; and that the stock of cattle referred to were sold by order of complainant, and purchased by respondent. He says further, that the mortgage to Angel was made by him as the sole and bona fide proprietor, and denies that Vincent gave him a note for any part of the loan. The note was for another consideration.

The respondent denies that he holds the estate in trust, and avers that he purchased it for fifteen thousand dollars; that he paid no part of the consideration at the time, but that he has since paid large sums of money to the complainant. He denies further that he was under obligation to convey to complainant, on request, or to any one else, whenever he might direct, and denies all efforts at settlement. The complainant eplies that he does not know whether the mortgage and notes for fifteen thousand dollars were executed, or whether they were delivered to him, as at the time he was in great mental trouble; but avers if such papers were signed they were merely for form, and no such mortgage is now recorded; and that for the space of one year from the 3d day of October, 1855, the defendant had possession of all repliant's papers; and if such papers were executed, their present existence is unknown to this repliant, and if any exist are in the possession of defendant. The repliant further says that the cattle referred to in the answer were offered for sale, but there being no purchasers, the cattle were bought in by the respondent, and no money was ever paid by defendant or received by complainant. The counsel for the complainant avers that Vincent

held the estate in trust for him, with the understanding that he would convey it to whomsoever the complain-And for sale by the Undersigned ant might direct, and that in pursuance thereof, he CASES MALCOM TOBACCO, 10s, 113 lbs each, complainant as Vincent had held it, and that the respondent has been in the same relation as Trustee. The counsel for the respondent contends that, as the deed is absolute in its terms, a trust cannot be established by parole testimony.

It is a general rule of law, that parole evidence is not admissible to create or modify interests in real estate, unless in cases of fraud and mistake. But trusts resulting by operation of law are expressly excepted from the operation of the statute of frauds. The doctrine that a trust may be established when the consideration of a deed moves, as in this case, from the complainant and not from the grantee, is fully sustained by Chancellor Kent in the case of Boyd vs. McLean, 1 Johns, Ch. R. 582; as when A purchases an estate with his own money, and the deed be taken in the name of B, a trust results by operation of law. This is a well known and a universally admitted rule in equity. The point raised is whether such a trust be within the statute of frauds, and whether the facts on which the trust arises may be shown by parole proof, in opposition to the language of the deed, and in opposition to the defendant's answer. The trust must result from the facts proved.—Botsford vs. Burr, 2 Johns, Ch. 405; Dow vs. Jewell Foster, 470.—But Root vs. Blake, 14 Pick., 27.—When the trust is proved, parole evidence is admissible to define its nature and operation.— 4 Bran , Ch. 472.

It is often a very difficult question to determine what facts will create a trust by operation of law.—Pem-broke vs. Allenston, 1 Foster, 107; 13 John., 463; Jackson vs. Mills; Boyd vs. McLean, 1 Johns, Ch.

The statute of frauds declares that "all declarations or creations of trusts and confidences of any lands, &c., shall be manifested and proved by some writing signed by the party, who is, or shall be by law, enabled to declare such trust, or else they shall be utterly void." The statute, however, excepts the case when any conveyance shall be made of any lands, &c., by which a trust or confidence shall arise or result, by implication or construction of law.

In the case of Botsford es. Burr, 2 John, Ch. R. 408, Chancellor Kent says that such a resulting trust may be established by parole proof, and the difficulty in all this class of cases is whether the facts make out a resulting trust. In all cases, where the money is paid by one person, and the deed taken in the name of another, a resulting trust arises; but if the party did not pay the money he cannot be permitted to prove that the purchase was made for his benefit, or en his account. The trust may be established by parole, al-though by the deed an acknowledgment is made that the money was paid by the nominal grantee. - Foot vs. Calvin, 3 Johns, 216; Suthrie vs. Gardner, 414-19 Wendall; Lowusburg vs. Purdey. 16 Barber, 376; Peabody vs. Turbill, 2 Cushing, 236; Lynch vs. Cox, 11 Johns, 255; Buck vs. Pike, 2 Fairfield, 9, 23; Baker vs. Vining, 30 Maine, 121, 125; Smith vs. Burnham, 3 Sumner. 435, 438.

I regard it settled by the authorities that a resulting trust may be established by parole evidence, although the grantee denies the trust in his answer; but the evidence must be full, clear and satisfactory.—3 Story.
181; 2 Story's Eq., 68; Hill on Trustees, 91; 1st
Leading Cases in Equity, 274—note and authorities there cited.

The cestui que trust is regarded in a Court of Equity as the real owner, for the beneficial interest vests in him. So that if the respondent had purchased the es-tate with the knowledge of the trust, the conveyance would be subject to it. He has a right in equity to dispose of the estate, and any disposition made by him is binding on the trustee.—Root es. Blake, 14 Pick., As early as the time of Lord Hardwicke, in the case of Lloyd rs. Spillot, 2 Atk. R., 150, the principle of a resulting trust was recognized as arising by operation of law, where an estate was purchased by one person and

the consideration was paid by another. He who pays the consideration is regarded in equity as the owner. He went farther in the case of Willis, 2 Atk., 72, and ten thousand dollars, payable in seven years, which he regards as wholly inadmissible, as the estate cost him to show the trust from the poor circumstances of the pretended owner of the real estate or inheritance, which made it impossible for him to be purchaser .- Linch vs. Linch, 10 Vesey, 518. And this doctrine is equally applicable to personal, as well as real, estate. In the case of Dyer os. Dyer, 2 Cox, 92, Lord Chief Justice Baron Eyre says, that "the clear result of all the cases, without a single exception, is that the trust of a legal estate, whether freehold, copyhold or leasehold; whether taken in the names of the purchaser and others jointly, or in the names of others without that of the purchaser; whether in one name or several; whether ointly or succession, results to the man who advances the purchase money; and it goes on a strict analogy to the rule of common law, that where a feoffment is made without consideration, the use results to the feoffor." Mr. Justice Story says, that this principle was recognized in a very short time after the passing of the

> in a great variety of decisions. The question whether parole evidence is admissible to establish the manner of paying the purchase money, has been involved in doubt. But, Justice Story and Chancellor Kent, after a very thorough examination of the subject, have decided that parole evidence is admissible to ascertain the trust. The same doctrine is maintained by the English authorities. The trust arises upon the ownership and payment of the money, and not upon a contract entered into on the part of the trustee -Pritchard vs. Brown. 4 N. H. Rep , 401; 4 Kent, 305; 2 Story's Eq. §1201. Chancellor Kent says, that a trust is merely what a use was before the statute of uses. It is an interest resting in conscience and equity, and the same rules apply to trusts in chancery which formerly applied to uses, and in exercising its jurisdiction on executory

trusts, the Court of Chancery is not bound by the tech-

nical rules of law, but takes a wider range in favor of the interest of the party. Fisher vs. Fields, 14 John,

statute of frauds of 29 Charles 2d, in an anonymous case

in 2 Ventris, 361, and that the doctrine of that case

has never been departed from, but has been recognized

A more difficult question than one of Law arises on the sufficiency of the evidence to establish the trust, as alleged by the complainant. A careful analysis of the testimony is necessary to form an opinion upon this very important point. Mr. Vincent testifies "that in 1848 he loaned the complainant \$5000, who gave him security on the lease which he then held of the Puuloa salt works and the salt there manufactured. The complainant went to California in 1848, and on his return in 1849, he purchased the title of the estate, and he conveyed it to him to secure the original loan, and a further advance, making the amount \$8000. And it was agreed at the time that he was to have one-third of the profits for his superintendance, the complainant one-third, and complainant's wife one-third; and it was distinctly understood, that on the payment of the \$8000 and interest, he was to re-convey the estate." He says further, "We made a settlement in 1853, and received full payment of complainant's indebtedness, and then desired to re-convey the estate. I received one-third of the profits for managing the estate. I considered the estate sacred, and I made provision to protect the complainant in my will. I thought the estate worth four times the amount he owed me. After my settlement with the complainant, the title remained in me for about one year and a half, and I expressed a wish to complainant to re convey the estate to him, and the complainant replied 'Oh, let it remain.' I mentioned the same thing to him again and again, and his answer was always the same. I thought the estate had better remain in my hands, as complainant was at that time intemperate, and sometimes his conduct was imprudent." Witness says he had rescued him from many troubles, that he felt the responsibility of the trust, and desired to get rid of it. However, the title remained in him till the arrival in this country of the respondent, and Isaac then said to him after introducing his brother: I will now take the deed of the land, and in preparing the deed, insert my brother's name in place of my own, and set the sum in the deed at \$15,000. He applied to Judge Harris, and he drew the deed for the land and the mortgage and three notes of \$5000 each at 6, 12 and 18 months. The notes and mortgage, I am under the impression, were made for the purpose of blinding Mr. Barris, the object being to put Mr. Daniel Montgomery in trust, and lead people to believe he owned the estate. He goes on to say, "I think I delivered them to the respondent. I did not endorse the notes or assign the mortgage. I had no negot tion with the respondent about the estate, and never lived any money from him, or any one else, for the Passait works."

The household furniture on the estate, at the date of

the deed to him, belonged to the complainant and his wife, that he never claimed to own it, that there were also cattle, horses, carts and canoes belonging to him. That there was also a large amount of lumber on the estate, and a large amount of goods belonging to the complainant, when he conveyed it to the respondent. It was the season for the manufacture of salt, and the goods were required to pay the natives for their labor.
That there was a schooner belonging to complainant which was worth \$2000, and the respondent six or eight months ago, came and asked him for the papers of the schooner, to which he replied that he had none, but thought that he would find them among the complainant's papers. That respondent replied that he had made search and they were not there. He refer red him to the Registrar's Office. Respondent then said that he intended to send her coastwise for wood, and that he could not send her without her register.
That respondent then requested him to accompany him
over to the Registrar's office and there acknowledge the

[Continued on Fourth Page.]